

You advised that you are planning to accept credit cards for payment of legal fees and expenses, including retainers for work to be performed. The bank has advised you that all credit card transactions will cause direct and automatic deposits into one, but only one, designated bank account.

You inquire as to how you would avoid violating the Code of Professional Responsibility by combining funds that may at times represent previously earned fees for work already performed, together with retainers for work to be performed, as well as expenses. The applicable rule is DR:9-102.

DR:9-102(A)(2) states that “all funds of clients paid a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated, and no funds belonging to the lawyer or law firm shall be deposited therein except as follows: funds belonging in part to a client and in part presently or potentially to the lawyer or law firm shall be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.”

Even though you may, at times, be depositing funds either totally earned or unearned, the Committee opines that it would not be improper for you to deposit all receipts into the trust account. The Committee advises that you must disburse any funds belonging to you into the operating account as soon thereafter as the Visa/Mastercard deposit into the trust fund is cleared. You must, however, wait until the deposit is recorded so that you do not disburse client funds into your operating account.

As a practical note, we are informed by bank officials that one bankcard member can maintain separate member accounts for their general account and for their trust account. Bankcard fees should not be affected, so that two accounts for one member will cost the same or almost the same as one account.

Committee Opinion
November 13, 1987